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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**MAY - 7 1997**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

MARC SOBEL

Applicant for Certain Part 90 Authorizations  
in the Los Angeles Area and Requestor of  
Certain Finder's Preferences

MARC SOBEL & MARC SOBEL d/b/a  
AIR WAVE COMMUNICATIONS

Licensee of Certain Part 90 Stations in the  
Los Angeles Area

**WT DOCKET No. 97-56**

**MOTION FOR SPECIAL RELIEF**

**To: The Honorable John M. Frysiak**  
**Presiding Administrative Law Judge**

Marc D. Sobel d/b/a Air Wave Communications ("Sobel"), by his attorney, hereby specifically moves the presiding officer to issue an order declaring no further motions to enlarge issues shall be filed in this proceeding without regard to the date on which the designation order may appear in the *Federal Register*.

1. Section 1.229(a) of the Commission's Rules and Regulations requires that, except in certain specified circumstances, motions to enlarge issues "must be filed within 15 days after the full text or a summary of the order designating the case for hearing has been published in the *Federal Register*." 47 C.F.R. § 1.229(a). In this proceeding, the *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, FCC 97-38, was adopted on 6 February 1997 and released on 12 February 1997. Now, nearly three months later, it still has not been published in the *Federal Register*.

2. On Thursday 1 May 1997, undersigned counsel inquired of the Publications Branch of the Commission's Office of Managing Director as to the status of *Federal Register* publication of the designation order. Undersigned counsel was advised that the designation order is not even scheduled for *Federal Register* publication because the Publications Branch has not yet received the item or a summary

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"from the author." Even though the designation order was formally considered and adopted by the Commission, it was nonetheless written and presented to the Commission by the Bureau. In that capacity, the Bureau should have taken measures to assure timely *Federal Register* publication. If the "author" from whom the Publications Branch is currently awaiting a summary is the Bureau or a member of the Bureau staff—a reasonable assumption—the Bureau is also directly responsible for the present continuing failure to effect publication.

3. Having partial, if not total, control of the event which triggers the cut-off date for motions to enlarge gives the Bureau an unfair procedural advantage—one it has already exploited. On 3 April 1997, nearly two months after adoption and release of the designation order, the Bureau filed a motion to enlarge seeking a misrepresentation and candor issue. The request was based on information that had been in the Bureau's possession for over two years—during which time the Bureau was extensively investigating the subjects of the motion. The Bureau nonetheless justifies the motion as timely because the designation order had not yet been published in the *Federal Register*. Sobel has no quarrel with a litigant taking full tactical advantage of applicable regulations; but it is another thing entirely for one party to have the exclusive ability to manipulate the procedural requirements.

4. It is still not certain when *Federal Register* publication will occur, and it appears that the Bureau is at least partially responsible for the past and continuing delay. Meanwhile, Sobel is expected to conduct his own discovery, respond to the Bureau's discovery requests, and prepare for hearing, all the while subject to possibility that the Bureau, at its own whim and sole discretion, may at any time tender other motions to enlarge. If Sobel's statutory hearing rights under Sections 309(e) and 312(c) of the Communications Act, 47 U.S.C. §§ 309(e) & 312(c), are to be honored and have any practical meaning, this unconscionably inequitable situation must be remedied.

5. Sobel respectfully submits that Section 1.243 of the Rules, 47 C.F.R. § 1.243, gives the presiding officer the requisite authority to remedy this inequity. Sobel asks that the presiding officer issue an order declaring that motions to enlarge will no longer be accepted in this proceeding except upon specific leave of the presiding officer pursuant to Section 1.229(c) of the Rules. If the presiding officer

determines that the requested relief is beyond the scope of his authority, Sobel alternatively prays that:

(a) the Bureau be directed to take all steps necessary to effect *Federal Register* publication of the designation order forthwith, and (b) that Sobel's request that window for filing motions to enlarge in this proceeding be closed notwithstanding Section 1.229(a) of the Rules be certified to the Commission with a recommendation for expedited action.

Dated this 5<sup>th</sup> day of May, 1997

A handwritten signature in black ink, reading "Robert J. Keller", with a horizontal line underneath.

By: Robert J. Keller  
Its Attorney

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Counsel for Mr. Marc D. Sobel  
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### CERTIFICATE OF SERVICE

I, Robert J. Keller, counsel for Marc D. Sobel d/b/a Air Wave Communications, hereby certify that on this 5<sup>th</sup> day of May, 1997, I caused copies of the foregoing *MOTION FOR SPECIAL RELIEF* to be sent by first class United States mail, postage prepaid, except as otherwise indicated below, to the presiding officer and the parties in WT Docket No. 97-56, as follows:

|||||  
HON JOHN M FRYSIK  
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